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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DOUGLAS MENDES SOUZA,

Defendant and Appellant.

F057160

(Super. Ct. No. VCF193607)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Kathryn T. Montejano, Judge.

Deborah Prucha, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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*Before Levy, A.P.J., Hill, J., and Kane, J.

On September 22, 2008, appellant Douglas Mendes Souza pled no contest to vehicular manslaughter (Veh. Code, § 192, subdivision (c)(1)) and admitted allegations that he had suffered one prior serious felony conviction within the meaning of Penal Code section 667, subdivision (a) and one “strike.”¹, with the understanding that the court would impose a prison sentence of 17 years.

On November 19, 2008, appellant moved for the appointment of substitute counsel. The court denied the motion.

On November 20, 2008, appellant filed a notice of motion to withdraw his plea, with supporting declaration and a memorandum of points and authorities. On December 17, 2008, following a hearing, the court denied the motion.

On December 30, 2008, the court imposed a prison term of 17 years, consisting of six years on substantive offense, doubled pursuant to the three strikes law for a total of 12 years (Pen. Code, §§ 667, subd. (e)(1); 1170.12, subd. (c)(1), plus five years on the prior serious felony enhancement.

On February 24, 2009, appellant filed a timely notice of appeal. On February 23, 2009, appellant requested, and the court denied, a certificate of probable cause (Pen. Code, § 1237.5).

Appellant’s appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d. 436.) Appellant, in response to this court’s invitation to submit supplemental briefing, has

¹ We use the term “strike” as a synonym for “prior felony conviction” within the meaning of the “three strikes” law (§§ 667, subds. (b)-(i); 1170.12), i.e., a prior felony conviction or juvenile adjudication that subjects a defendant to the increased punishment specified in the three strikes law.

himself submitted a brief in which he argues, as best we can determine, that his guilty plea was the product of ineffective assistance of counsel. We will affirm.

FACTS

The report of the probation officer indicated that according to Tulare Police Department reports, the following occurred on April 26, 2007. Appellant, driving his vehicle, “encountered” a 2005 Chevrolet Trailblazer “driven by [Matthew Corral] at a red light.” Both drivers “revved their engines, and began to race” They both were “changing lanes in order to pass the other.” Corral, while attempting to pass appellant, lost control of his vehicle, struck the cement median, rolled over several times, struck a tree, and landed upside down. Corral died in the crash. Appellant saw the crash and drove away.

DISCUSSION

Appellant’s contention that he was denied his right to effective assistance of counsel is foreclosed by the absence of a certificate of probable cause. (*People v. Stubbs* (1998) 61 Cal.App.4th 243 [claim of ineffective assistance occurring prior to plea went to validity of plea and therefore not cognizable on appeal in absence of compliance with certificate of probable cause requirements].)

Following independent review of the record, we have concluded that no reasonably arguable legal or factual issues exist.

The judgment is affirmed.